Editor's note: 79 I.D. 532

ASHLAND OIL, INC. ET AL.

IBLA 71-29 (Supp.) Decided August 9, 1972

Appeal from decision (W 032652-A et al.) of land office, Cheyenne, Wyoming, of the Bureau of Land Management, holding oil and gas leases to have terminated.

Affirmed.

Appeals -- Rules of Practice: Appeals: Dismissal

Where an appeal has been dismissed because it is deemed moot, and new facts adduced show that the appeal is justiciable, the appeal is properly considered on its merits.

Oil and Gas Leases: Extensions -- Words and Phrases

An oil and gas lease which has been extended and has vitality only by reason of its inclusion in a producing unit is not within its "primary term" within the ambit of 30 U.S.C. § 226-1(d) (1970).

"Primary term" in that context includes all definite and finite periods of extension fixed by law. It does not include any period of time whose termination depends upon the occurrence or nonoccurrence of a contingency, e.g., the cessation or continuation of production.

Oil and Gas Leases: Drilling -- Oil and Gas Leases: Extensions -- Oil and Gas Leases: Unit and Cooperative Agreements

Actual drilling operations on an oil and gas lease, commenced during or after a period when a lease exists only by reason of its commitment to a productive unit, are not a sufficient basis for invoking the two-year extension under 30 U.S.C. § 226-1(d) (1970).

APPEARANCES: James S. Holmberg, Esq., for the appellants.

OPINION BY MR. FISHMAN

The parties, listed in Appendix A, appealed from a decision of July 13, 1970, of the land office at Cheyenne, Wyoming, holding that the oil and gas leases shown in Appendix A, terminated on March 31, 1970.

Our decision, 6 IBLA 187, of June 15, 1972, dismissed the appeals on the basis that the period of the requested extension terminated on March 31, 1972, and that the appeals were therefore moot.

Our earlier decision was correct on the basis of the data then contained in the record. However, on July 5, 1972, the appellants filed a document requesting consideration of the appeals on their merits. They point out that on February 9, 1971, the Schoonover Unit Agreement was terminated and that termination automatically extends all existing federal leases in the unit to February 9, 1973. 1/ This data has been verified and we agree that the new information developed renders the appeals justiciable. Accordingly, we grant reconsideration.

We therefore consider the appeals on their merits. A brief statement of the pertinent facts follows.

Each of the oil and gas leases in issue was issued May 1, 1955, and thereafter extended under various provisions of the law until March 31, 1967. As of that date, each of the leases was committed to the Schoonover Unit, Number 14-08-0001-8837. The leases were held to be extended by production on another part of the unit. Effective March 31, 1968, the Schoonover Unit was terminated and all leases were further extended until March 31, 1970.

1/ 30 U.S.C. § 226(j) (1970) provides in applicable portion:

"* * * Any lease which shall be eliminated from any such approved or prescribed plan, or from any communitization or drilling agreement authorized by this section, and any lease which shall be in effect at the termination of any such approved or prescribed plan, or at the termination of any such communitization or drilling agreement, unless relinquished, shall continue in effect for the original term thereof, but for not less than two years, and so long thereafter as oil or gas is produced in paying quantities."

See also 30 U.S.C. § 226-1(d) (1970).

In January of 1970, Webb Resources, Inc., and Samuel Gary purchased all interest in the captioned leases except for certain undivided fractional interests held by Ashland Oil, Inc. Appellants promptly took steps to unitize the leases into a new unit. Schoonover Unit, Number 14-08-0001-11708, was duly approved by the United States Geological Survey effective March 31, 1970. On that date the appellants were conducting diligent drilling operations on the unit, having in mind 30 U.S.C. § 226-1(d) (1970). 2/

In a memorandum to the land office, Cheyenne, Wyoming, dated June 26, 1970, the regional oil and gas supervisor, United States Geological Survey, reported that "[D]rilling operations have fulfilled the drilling requirements under the Unit Agreement and all operational requirements for a lease extension have been met."

In the decision appealed from, the land office held all of the leases in issue to have expired, despite the diligent drilling operations on the grounds that the leases were not in their primary term as the same is defined in 43 CFR 3107.2-1(b) (35 F.R. 9687, June 13, 1970). 3/

2/ This subsection reads as follows:

"Any lease issued prior to September 2, 1960, which has been maintained in accordance with applicable statutory requirements and regulations and which pertains to land on which, or for which under an approved cooperative or unit plan of development or operation, actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time shall be extended for two years and so long thereafter as oil or gas is produced in paying quantities."

3/ This subsection reads as follows:

"Primary term. 'Primary term' means all periods in the life of

Regulation 43 CFR 3107.2-3 (35 F.R. 9687, June 13, 1970) provides:

> Any lease on which actual drilling operations, or for which under an approved cooperative or unit plan of development or operation, actual drilling operations were commenced prior to the end of its primary term and are being diligently prosecuted at that time, shall be extended for 2 years and so long thereafter as oil or gas is produced in paying quantities.

The crucial issue presented by the appellants is whether leases, which had been extended by reason of their inclusion in a producing unit, but which were not in the participating area, are still in their "primary term" within the ambit of that regulation. If the leases are deemed to be in that status, the actual drilling operations commenced or diligently prosecuted prior to the end of that period would extend the leases for two years and so long thereafter as oil or gas is produced in paying quantities. Solicitor's Opinion, 67 I.D. 357 (1960), holds that "primary term" includes all periods in the life of a lease prior to its extension by reason of the production of oil and gas in paying quantities.

The precise question raised is whether a lease which has been extended because of production 4/ not on it, but on a unit, is still in its "primary term".

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fn. 3 (Cont.)
the lease prior to its extension by reason of production of oil or as in paying quantities."
See LAW OF FEDERAL OIL AND GAS LEASES, § 6.7 at p. 207, ROCKY MOUNTAIN MINERAL LAW FOUNDATION, 1971.

4/ Obviously, a lease which has been extended because of production on that lease is not in its "primary term", as defined in 43 CFR 3107.2-1(b) and Solicitor's Opinion, supra.

The Solicitor's Opinion, supra, pp. 360 and 362, states in applicable portion as follows:

> * * * Because of the amendment of section 30(a) of the Mineral Leasing Act to deny an extension of the undeveloped, segregated portions of a lease for two years from the date of any partial assignment made during extension periods for reasons other than production, it appears that Congress intended at least as to future leases that no lease should continue for more than 12 years without production either on the lease or in a unit to which it was committed. This of course has some bearing on the question before us. It is not conclusive, however, because leases issued prior to the [A]ct [of September 2, 1960 (74 Stat. 781)] were expressly excluded.
>
> * * * * * * *
>
> It is my conclusion that the intent of Congress in the enactment of section 4(d) was that the words "primary term" as there used covers the entire period in the life of the lease prior to the period of extension because of production.

The essence of continuation of a lease in a producing unit is that production which is occurring on one tract in the unit is deemed to take place constructively on each tract and lease in the unit. 5/ 1 ROCKY MOUNTAIN MINERAL LAW INSTITUTE 110 (1955).

This view is buttressed by the following:

> An argument can be made, based upon the strict language of the 1960 Revision and of prior legislation,

5/ Sec. 18(b) of the Schoonover Unit Agreement, No. 14-08-0001-8837, provided as follows:

"(b) Drilling and producing operations performed hereunder upon any tract of unitized lands will be accepted and deemed to be performed upon and for the benefit of each and every tract of unitized land, and no lease shall be deemed to expire by reason of failure to drill or produce wells situated on the land therein embraced."

> that the Solicitor's previous interpretation of the law to the effect that "primary term" means the initial 5 year term of a lease is still the law and that a two year extension based upon the commencement of drilling on a pre-September 2, 1960 lease in its tenth year is invalid. Unless and until the matter is contested in the courts, however, it appears that such extensions will be recognized.
>
> What effect does this opinion by the Solicitor have on extensions of pre-September 2, 1960 noncompetitive leases? The right to extend, by partial assignment, both the assigned and the retained portions of a pre-September 2, 1960 lease in its extended term under any provision of the Mineral Leasing Act was not altered by the 1960 Revision. Thus, an extension for two years beyond the tenth lease year may be obtained by partial assignment, followed by another two year extension by reason of the commencement of drilling at the end of the twelfth year. In fact, any combination of extensions, such as by payment of compensatory royalty, segregation from a unitized lease or otherwise, not resulting in production, would apparently constitute a part of the life of the lease prior to extension by reason of production and therefore the lease would be within its primary term as defined by the Solicitor and entitled to an additional two year commencement-of-drilling extension. Extension by commitment to a unit in which there is production would seem to be excluded because of prior decisions that production within the unit is deemed to be production on each lease committed thereto. [Footnotes omitted.] [Emphasis supplied.]

7 ROCKY MOUNTAIN MINERAL LAW INSTITUTE at 228-229 (1962).

Further support for this concept is enunciated in Seaboard Oil Co., 64 I.D. 405 (1957) as follows:

> The question then is whether the extension of a noncompetitive lease committed to a unit agreement falls in the category of extensions of producing leases or in the category of extension provisions like the assignment provision. The history of the unitization provision shows clearly that a unitized

> lease falls in the category of producing leases. Prior to the 1946 act there was no statutory provision for the extension of unitized leases except 20-year leases. Unitized leases dependent upon production for continuance beyond their fixed terms were therefore seemingly dependent upon actual production for continuance. However, because of provisions in unit agreements that drilling and producing operations performed on any unitized land would be deemed to be operations under and for the benefit of all unitized leases, the Department held that all unitized noncompetitive leases would be extended so long as there was production in paying quantities anywhere in the unit area. All unitized leases were in effect deemed to be a single consolidated lease so far as production was concerned. When the 1946 act was before the Congress for consideration, the Department recommended the inclusion of a provision which would ratify and expressly sanction the Department's practice of extending unitized leases. Congress adopted the Department's proposal without change. It is indisputable therefore that the intent of section 17(b) was to extend unitized noncompetitive leases on the theory that they are all, in effect, a single consolidated lease so that production anywhere in the unit area will extend all the leases even though there is no actual production from or allocated to a particular lease and even though the land in a lease is not even deemed to be situated on the known geologic structure of a producing field. [Footnote omitted.] [Emphasis supplied.]

We therefore conclude that: (1) a lease which has been extended by reason of being committed to a producing unit has been extended by reason of production; (2) such a lease is no longer in its "primary term"; and (3) actual drilling operations on a lease so extended creates no right to a two-year extension under the Mineral Leasing Act.

7 IBLA 65

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

Frederick Fishman
Member

We concur:

Anne Poindexter Lewis
Member

Douglas E. Henriques
Member

APPENDIX

Serial Number	Lessees
Wyoming	
032652-A	Ashland Oil, Inc. Webb Resources, Inc. Samuel Gary
032652-F	Webb Resources, Inc. Samuel Gary
032652-G	Webb Resources, Inc. Samuel Gary
032652-H	Ashland Oil, Inc. Webb Resources, Inc. Samuel Gary
032652-L	Webb Resources, Inc. Samuel Gary
032653-B	Ashland Oil, Inc. Webb Resources, Inc. Samuel Gary
032653-C	Webb Resources, Inc. Samuel Gary
032653-D	Webb Resources, Inc. Samuel Gary
032653-H	Webb Resources, Inc. Samuel Gary
032653-I	Webb Resources, Inc. Samuel Gary
032654-C	Webb Resources, Inc.
032654-F	Webb Resources, Inc. Samuel Gary
032655-F	Webb Resources, Inc. Samuel Gary
032655-G	Webb Resources, Inc. Samuel Gary
032655-H	Webb Resources, Inc. Samuel Gary